IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

:: J U D G M E N T ::

S.B. CRIMINAL APPEAL NO.352/1988
(Nenaram & Anr. Vs. State of Rajasthan)

S.B. CRIMINAL APPEAL UNDER SECTION 374 Cr.P.C. AGAINST THE JUDGMENT DATED 29.08.1988 PASSED BY THE LEARNED ADDITIONAL SESSIONS JUDGE NO.2, JODHPUR IN SESSIONS CASE NO.46/82 – STATE OF RAJASTHAN VS. NENARAM & ANR.

DATE OF JUDGMENT : 20th November, 2007

P R E S E N T

HON'BLE MR. JUSTICE DEO NARAYAN THANVI

Mr. Vineet Jain for
Mr. Sandeep Mehta for the appellant.
Mr. JPS Choudhary, Public Prosecutor.

BY THE COURT :

1. This appeal is directed against the judgment & order dated 29.08.1988 passed by the learned Additional Sessions Judge

No.2, Jodhpur in Sessions Case No.46/82, whereby, he convicted accused appellant Budharam for offence under Section 307 IPC and accused appellant Nenaram for offence under Section 307/34 IPC and sentenced each of them to undergo five years' rigorous imprisonment and to pay a fine of Rs.1000/-, in default of payment of find to further undergo three months' simple imprisonment. The fine of Rs.2000/- was ordered to be paid to injured Heera Lal by way of compensation.

2. The prosecution story in brief is that one Mool Singh, brother of injured Heera Lal lodged a written report Ex.P-1 on 27.8.82 at police station Mahamandir, Jodhpur that on the preceding night at about 9.30 pm, when his younger brother Heera Lal was coming to his house, accused appellants Nenaram and Budharam stopped his brother in the way and inflicted blows with lathi and fists. He and his brother Shanker Lal went there upon hearing the cry of Heera Lal and intervened. According to this report, accused Nenaram inflicted lathi blows near the left ear of injured Heera Lal, whereby, blood came and accused appellant Budharam inflicted fist blows on his abdomen . Due to these blows, accused attempted to kill his brother. His brother was admitted in the hospital. Upon this report, police registered a case under Sections 341, 323 and 307 IPC and investigated the case. After usual investigation, accused appellants were

challaned under Sections 341, 323, 325 and 307 IPC in the court of Judicial Magistrate No.3, Jodhpur, who committed the case to the court of Sessions. After hearing the arguments on charge, both the accused appellants were charged for offence under Sections 307, 307 read with Section 34 and Section 323 IPC, to which, they pleaded not guilty. Prosecution examined seven witnesses. Statements of accused appellants were recorded under Section 313 Cr.P.C. After hearing the arguments, the learned Sessions Judge convicted the accused appellants as indicated above.

3. I have heard learned counsel for the accused appellants and the learned Public Prosecutor and re-appreciated the evidence on record. In this case, the material witness is injured Heera Lal PW-2. He has stated that he and Prabhu Ram were coming from Bhadwasiya to their residence, near Imartiyabera, accused appellants Nenaram and Budharam met them in the way. Accused appellant Nenaram having lathi in his hand started quarreled with them. They took him to the vacate house. Accused appellant Nenaram inflicted lathi blow near his left ear and accused appellant Budharam inflicted fist blows on his abdomen. Upon cry by Prabhu Ram, accused appellants ran away. When he was crying, his brother Shanker Lal and Moola Ram came on the spot and intervened. He was taken to the

hospital. He has also stated that accused appellant Budharam tried to throw a stone of 20 to 25 kg, which collided with his abdomen when he was raising his hands. He remained in the hospital for 28 days. PW-1 Mool Singh and PW-3 Shanker Lal have also supported the testimony of injured Heera Lal but Mool Singh has not said that stone was thrown by accused appellants, whereas, PW-3 Shanker Lal has stated that Budharam threw stone on the abdomen of his brother. The story of stone is uncorroborated. PW-2 Heera Lal says that when accused appellant Budharam was throwing stone, he raised his hands and, thereafter, the stone felt on his abdomen.

4. While re-appreciating the evidence of three witnesses, it transpires that neither there was any motive to inflict the injuries nor there was any intention to commit murder of injured Heera Lal. Neither the fist blows nor the lathi blows were sufficient to cause death. More so, by using these weapons, it cannot be said that accused appellants were having knowledge that by inflicting such blows, death will be caused. In the absence of this, the finding of the learned trial court that the blows were inflicted with an attempt to commit murder cannot be sustained. Merely because injured remained in the hospital for 28 days cannot be a ground to convict the accused appellants for offence under Section 307 IPC for attempting to commit murder specially when

injured himself says that the abdomen injuries were caused when the stone felt down on raising hands by him.

5. As regards injuries on the person of injured Heera Lal, Dr. Jagdish PW-5 has stated that he first examined the injured vide Ex.P-7 and found six injuries on the person of injured Heera Lal, out of which, injuries no.1, 2, 3 and 5 were caused with blunt object and injury no.4 was caused by sharp weapon. As discussed above, accused appellants used lathi and fist blows. The doctor came to the conclusion that injury no.4 was caused by sharp weapon, which is said to be stitched wound around ear. Stitched wound can come only by sharp weapon but sharp weapon has not been used on the ear. Injured Heera Lal himself says that lathi blow was inflicted on the left ear by accused appellant Nenaram. Injury No.5 is said to have been dangerous to life but this opinion has been given by PW-6 Dr. Vinaychand Bothra on the basis of report Ex.P-8, which was prepared by doctors on duty and who operated the injured. The name of this doctor is Dr. F.S.Mehta, but he has not been examined by the prosecution. In the absence of evidence of this doctor, it cannot be said that injury no.5 was dangerous to life. When sharp weapon has not been used and injury no.5 is not said to be dangerous to life, the conviction for offence under Section 307 IPC cannot be recorded. Inflicting injuries by lathi and fist blows,

which are simple in nature, without any motive or intention to kill can be categorized only in case of Section 323 IPC.

6. Consequently, the appeal is partly allowed. The conviction of accused appellants Nenaram and Budharam for offence under Sections 307, 307 read with Section 34 IPC is altered to that of Section 323 IPC and they are sentenced to the period already undergone. However, looking to the nature of the injuries, fine imposed on both the accused appellants is enhanced from Rs.1000/- to Rs.10,000/- on each of the accused appellant. The amount of fine shall be paid to injured Heera Lal within 15 days by depositing it in the trial court.

(DEO NARAYAN THANVI), J.

ms rathore